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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,161	08/08/2003	Herb M. Poplawski	36400.35US2	2925
25541	7590	05/19/2004	EXAMINER	
NEAL, GERBER, & EISENBERG SUITE 2200 2 NORTH LASALLE STREET CHICAGO, IL 60602			LEWIS, TISHA D	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/637,161

**Applicant(s)**

POPLAWSKI ET AL.

**Examiner**

TISHA D. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The following is a first action on the merits of application serial no. 10/637,161 filed on August 8, 2003.

#### ***Priority***

If applicant desires priority under 35 U.S.C. 120 based upon a previously filed application, specific reference to the earlier filed application must be made in the instant application. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. For this application, the patent number 6,651,529 for the parent application 10/187,931 should be inserted into the reference.

#### ***Information Disclosure Statement***

The information disclosure statement filed on August 8, 2003 has been acknowledged. The references cited on the PTO-1449 are enclosed in the parent application 10/187,931.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent application publication to Boyer et al ('384). As to claim 1, Boyer et al discloses a vehicle including a vehicle frame (22) having at least one vertically oriented side frame member (24), a transmission housing (110) mounted to the frame member (via 48), a hydrostatic transmission (104) mounted in the transmission housing comprising a motor and pump connected through a circuit [0054], and an axle shaft (44, 46) driven by the motor (via 48) and extending perpendicular to the frame member.

As to claim 2, Boyer et al discloses two vertical side frame members (24, 26) having the transmission housing secured to one of the frame members.

As to claim 3, Boyer et al discloses the housing being secured to the frame member by at least one bracket (38, 40).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 7-11, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al in view of Hauser et al ('531). As to claim 5, Boyer et al discloses a transmission housing mounted to a frame member, but does not disclose a control arm engaged to the transmission.

Hauser et al discloses a vehicle having a transmission housing (21, 22) split vertically comprising a hydraulic motor and pump connected through a circuit, an axle shaft (90) driven by the motor and extending perpendicular to the vertical housing and a control arm (108) engaged to the housing (22) and mounted partially inside the housing (shaft of control arm) and partially outside the housing (lever of control arm) which would be between the housing and frame.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer et al with a control arm engaged to the transmission in view of Hauser et al to limit rotational movement of the transmission output.

As to claim 7, Boyer et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface and a motor running surface.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer with a center section having a pump and motor running surface in view of Hauser et al to hydraulically connect the pump and motor for operation to the axles.

As to claim 8, Boyer et al discloses a motor shaft (transmission output shaft, [0053, line 6]) driven by the motor and parallel to the axle shaft.

As to claim 9, Boyer et al discloses a vehicle frame (22) having at least one vertical side frame member (24), a transmission housing (110) mounted between and

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secured to the side frame member, a hydrostatic transmission (104) mounted in the housing comprising a pump and a control mechanism (118) controlling output of the pump, but does not disclose a control arm engaged to the control mechanism.

Hauser et al discloses a vehicle having a transmission housing (21, 22) split vertically comprising a hydraulic motor and pump connected through a circuit, an axle shaft (90) driven by the motor and extending perpendicular to the vertical housing and a control arm (108) engaged to the housing (22) and mounted partially inside the housing (shaft of control arm) and partially outside the housing (lever of control arm) which would be between the housing and frame.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer et al with a control arm engaged to the transmission in view of Hauser et al to limit rotational movement of the transmission output.

As to claim 10, Boyer et al discloses the control mechanism being in the form of a rotatable swash plate [0054].

As to claim 11, Boyer et al discloses a motor mounted in the housing in fluid communication with the pump and an axle shaft (44, 46) mounted in and extending from the housing (via 48) and driven by the motor.

As to claim 14, Boyer et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface and a motor running surface.

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer with a center section having a pump and motor running surface in view of Hauser et al to hydraulically connect the pump and motor for operation to the axles.

As to claim 15, Boyer et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface perpendicular to the vertical transmission housing (21, 22) and a motor running surface horizontal to the housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer with a center section having a pump oriented vertically to the frame and a motor oriented horizontal to the frame in view of Hauser et al to reduce the height of the transmission in the vertical direction.

As to claim 16, Boyer et al discloses a motor shaft (output shaft of transmission [0053], line 6) driven by the motor, a reduction gear (94, 96) driven by the motor shaft, and a bull gear (90) driven by the reduction gear and linked to the axle shaft.

As to claim 17, Boyer et al discloses the motor shaft being parallel to the axle shaft.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al in view of Yoshina et al ('316). Boyer et al discloses a transmission housing secured to a frame member by brackets, but the housing does not disclose a boss for securing to the brackets.

Yoshina et al discloses a snow thrower auger (46) driven by an engine (E), a hydraulic motor (M) driven by the engine and a transmission housing (1, 2) secured to a frame (27) by brackets (27a) which are secured to bosses (2a) formed with the transmission housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer et al with bosses formed with the transmission housing in view of Yoshina et al to eliminate additional (separate) components used to secure the housing to the frame member.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer et al in view of Hauser et al as applied to claim 9 above, and further in view of Yoshina et al. Boyer et al in view of Hauser discloses a transmission housing secured to a frame member by brackets, but the housing does not disclose a boss for securing to the brackets.

Yoshina et al discloses a snow thrower auger (46) driven by an engine (E), a hydraulic motor (M) driven by the engine and a transmission housing (1, 2) secured to a frame (27) by brackets (27a) which are secured to bosses (2a) formed with the transmission housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Boyer et al in view of Hauser et al with bosses formed with the transmission housing in view of Yoshina et al to eliminate additional (separate) components used to secure the housing to the frame member.



### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 and 10-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 18-20, 28-30, 37-40, 42-45, 48-53 and 58-60 of U.S. Patent No. 6,651,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim a hydrostatic transmission having a pump and motor wherein the motor drives an axle, a vehicle frame having a vertical side frame member secured to a transmission housing, the axle being perpendicular to the side frame member, a sleeve piece carried by the housing for releasably driving the axle, a snow thrower having an auger driven by an engine with a pulley, a transmission having a pulley, a cooling fan mounted on the transmission input shaft, the input shaft extending through a loop created by a belt whereby the fan and transmission are on opposite sides, etc..

***Allowable Subject Matter***

Claims 19-22 would be allowable upon filing of a terminal disclaimer as stated above. Claims 12 and 13 would be allowable upon filing of a terminal disclaimer as stated above and including all of the limitations of the base and any intervening claims.

**FACSIMILE TRANSMISSION**

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is **(703) 872-9326 before final and 703-872-9327 after final**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

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If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


-Inoue et al ('263), Hauser ('670) and ('958), and Ohashi et al ('524) are cited as having a hydrostatic transmission using vertical split transmission housings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 703-305-0921. The examiner can normally be reached on M-Thur 8 AM TO 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 703-308-0830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tdl  
May 14, 2004

  
**TISHA LEWIS**  
**PRIMARY EXAMINER**  
Art 3681 5/14/04